

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,

Plaintiff,

vs.

K. ALLISON, et al.,

Defendants.

1:21-cv-00912-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE,
FOR FAILURE TO OBEY COURT
ORDER
(ECF No. 9.)**

**OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

Christopher Lipsey, Jr. ("Plaintiff"), is a state prisoner proceeding *pro se* with this civil rights action. On June 9, 2021, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On July 6, 2021, the court issued an order requiring Plaintiff to pay the \$402.00 filing fee for this action in full within thirty days. (ECF No. 9.) The thirty-day time period has now expired, and Plaintiff has not paid the filing fee or otherwise responded to the court's order. Therefore, it will be recommended that this case be dismissed for Plaintiff's failure to comply with the court's order.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in

1 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
2 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
3 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,
4 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

5 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””
6 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
7 action has been pending since June 29, 2021. Plaintiff’s failure to respond to the Court’s order
8 may reflect Plaintiff’s disinterest in prosecuting this case or his inability to pay the filing fee. In
9 such an instance, the Court cannot continue to expend its scarce resources assisting a litigant who
10 will not resolve payment of the filing fee for this action. Thus, both the first and second factors
11 weigh in favor of dismissal.

12 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
13 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
14 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
15 is Plaintiff’s failure to pay the filing fee for this case that is causing delay. Therefore, the third
16 factor weighs in favor of dismissal.

17 As for the availability of lesser sanctions, at this stage in the proceedings there is little
18 available to the Court which would constitute a satisfactory lesser sanction while protecting the
19 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this
20 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
21 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
22 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
23 of dismissal with prejudice.

24 Finally, because public policy favors disposition on the merits, this factor will always
25 weigh against dismissal. Id. at 643.

26 Accordingly, **IT IS HEREBY RECOMMENDED** that:

- 27 1. This action be dismissed, without prejudice, based on Plaintiff’s failure to obey
28 the Court’s order issued on July 6, 2021; and

2. The Clerk be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after the date of service of these findings and recommendations, Plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 27, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE